

TOM DAVIS, VIRGINIA,  
CHAIRMAN

CHRISTOPHER SHAYS, CONNECTICUT  
DAN BURTON, INDIANA  
ILEANA ROS-LEHTINEN, FLORIDA  
JOHN M. McHUGH, NEW YORK  
JOHN L. MICA, FLORIDA  
GIL GUTKNECHT, MINNESOTA  
MARK E. SOUDER, INDIANA  
STEVEN C. LATOURETTE, OHIO  
TODD RUSSELL PLATTS, PENNSYLVANIA  
CHRIS CANNON, UTAH  
JOHN J. DUNCAN, JR., TENNESSEE  
CANDICE MILLER, MICHIGAN  
MICHAEL R. TURNER, OHIO  
DARRELL ISSA, CALIFORNIA  
VIRGINIA BROWN-WAITE, FLORIDA  
JON C. PORTER, NEVADA  
KENNY MARCHANT, TEXAS  
LYNN A. WESTMORELAND, GEORGIA  
PATRICK T. McHENRY, NORTH CAROLINA  
CHARLES W. DENT, PENNSYLVANIA  
VIRGINIA FOXX, NORTH CAROLINA

ONE HUNDRED NINTH CONGRESS

# Congress of the United States

## House of Representatives

COMMITTEE ON GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5074  
FACSIMILE (202) 225-3974  
MINORITY (202) 225-5051  
TTY (202) 225-6862

<http://reform.house.gov>

HENRY A. WAXMAN, CALIFORNIA,  
RANKING MINORITY MEMBER

TOM LANTOS, CALIFORNIA  
MAJOR R. OWENS, NEW YORK  
EDOLPHUS TOWNS, NEW YORK  
PAUL E. KANJORSKI, PENNSYLVANIA  
CAROLYN B. MALONEY, NEW YORK  
ELIJAH E. CUMMINGS, MARYLAND  
DENNIS J. KUCINICH, OHIO  
DANNY K. DAVIS, ILLINOIS  
WM. LACY CLAY, MISSOURI  
DIANE E. WATSON, CALIFORNIA  
STEPHEN F. LYNCH, MASSACHUSETTS  
CHRIS VAN HOLLEN, MARYLAND  
LINDA T. SANCHEZ, CALIFORNIA  
C.A. DUTCH RUPPERSBERGER,  
MARYLAND  
BRIAN HIGGINS, NEW YORK  
ELEANOR HOLMES NORTON,  
DISTRICT OF COLUMBIA

BERNARD SANDERS, VERMONT,  
INDEPENDENT

## *“Establishing a Commission to Recommend Improvements for the Federal Employees Appeals Process”*

Subcommittee on the Federal Workforce and Agency Organization  
Chairman Jon C. Porter

July 11, 2006

I would like to thank everyone for being here today to discuss the formation of a Federal Employees Appeals Commission.

In a previous hearing—“Justice Delayed is Justice Denied”—there appeared to be general recognition by the agency stakeholders and the Members of this Subcommittee that problems exist in the federal employee appeals process. The current system, implemented as a result of the 1978 Civil Service Reform Act, is complex, often confusing, and may have outlived its original purpose. The GAO once had this to say about the current system:

“[B]ecause of the complexity of the system and the variety of redress mechanisms it affords federal employees, it is inefficient, expensive, and time-consuming.”

In hopes of examining and potentially reforming the process, I have disseminated a draft legislative proposal to establish a Commission whose purpose would be to study the challenges in the current federal employee appeals process and the many potential solutions available to increase the efficiency and fairness of the process.

In the first hearing, we shed light on some of the more glaring problems with the current system—generally, appeals take too long, are handled inefficiently, and are often-times frivolous. Federal employees and managers do not always receive a timely resolution of their disputes. Although the Merit Systems Protection Board (MSPB), the Equal Employment Opportunity Commission (EEOC), the Office of Special Counsel (OSC), and the Federal Labor Relations Association (FLRA) all conduct their fiduciary duties admirably and are consistently striving for improvement, I anticipate that, by working together, these agencies can better meet their administrative needs and the needs of the employees and managers in assuring that justice is available to all.

In 1978, the current federal employees' appeals process was created with the expectation that splitting adjudication of employee disputes into multiple agencies would resolve the problems with the appeals system. Almost 30 years later the current system has little improved upon the same problems that spurred the original changes. The current catalyst for change is the continuing inexcusable delays in the system.

Last year, this subcommittee looked at only *one* possible approach to improving the federal employees' appeals process by consolidating appeals and filtering them through a one-stop-shop agency or federal court with the responsibility for employee appeals. Today, we are here to discuss the formation of a Commission to look at *other* possible approaches to fixing the flaws in the system. The Commission would be charged with exploring a whole realm of options as solutions to repair a somewhat broken process.

The goal here today is to discuss the form and function of this Commission. Our overall intent is not to curtail rights, but rather to expedite justice to ensure fair grievance procedures by eliminating inefficiencies. For instance, I find it is most unfortunate if our current belabored system acts as a deterrent to aggrieved employees because they fear it is a waste of time and not worth the risks involved in waiting years for a resolution while they often continue to work in the same environment that gave rise to the claim in the first place.

The Commission membership would be composed of ten members, including representatives from each of the stakeholder agencies and organizations represented by the distinguished witnesses from whom we will hear shortly. With the formation of this Commission, all of you here today have an opportunity to study the problems and recommend solutions that will best meet the needs of employees and managers seeking resolutions of employee grievances. I expect the Commission will offer recommendations for streamlining the process to benefit both employees and managers. Additionally, the Commission may want to explore how claims and disputes are reviewed at the initial stages of agency review, and how improvements at this stage may improve efficiency in the appeals process. In a June 2006 report, the GAO "found little evidence of coordination at the operating level between EEOC and OPM in developing policy, providing guidance, and exercising oversight, despite overlapping responsibilities in federal workplace EEO." Coordination or lack thereof may need to be examined at every stage of the process. The emphasis would be to focus on the process and recommend program changes and legislative fixes if necessary.

By establishing a Commission, I wish to bring together representatives from the primary stakeholders—those who are best situated to analyze what does and does not work within the current federal employees' appeals system. You are the experts and, I hope, the visionaries who have an opportunity to advise Congress as to how the federal employees appeals process can be improved and streamlined at all levels. The subcommittee needs your assistance to build on a solid foundation to create a more efficient and effective model to preserve the valuable rights of federal employees. There are many tools at your disposal: institutional knowledge of what has and has not worked well in the past; employees and managers who have been through the process and see room for improvement; vast advancements in technology; alternative dispute resolution with the potential for resolving employee disputes early in the process; and countless other possible resources to draw upon. This Commission will have the opportunity to work together and recommend improvements to better meet the best interests of us all.

I commend you for being here today and for your willingness to continue to work together to tackle a complex issue. We need to enhance our approach to achieving a just, efficient, and effective employee appeals system. I am confident that with your expertise, we can preserve the rights of federal employees and at the same time increase the efficiency and effectiveness of the federal employee appeals process.

With that said, I invite our first panel to share their comments on the draft proposal to establish a Federal Employees Appeals Commission.

